IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.4493 OF 2005

The Greater Bombay Co-op. Bank Ltd.)..Petitioner

Versus

Smt.Tejkumar Ruia and another)..Respondents

Mr.V.Walavalkar i/b.Mr.S.R.Bhalekar the Petitioner.
Mr.R.V.Govilkar for Respondent No.1.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 20TH JULY 2005

P.C.:

. This Petition is directed against an order dated 19th March 2005 passed by the Small Causes Court at Bombay in Interim Notice No.598 of 2005 in R.A.D. Suit No.162 of 2004 allowing the notice filed by Respondent No.1 for adding the Petitioner Bank as a party Defendant to the Suit. The suit filed by Respondent No.1 before the trial Court is a declaratory suit, Respondent No.1 claiming a declaration that she is a tenant of Respondent No.2. While the suit was being heard, the possession of the suit premises was taken over by the petitioner-bank. Respondent No.1, therefore, sought to amend her plaint by adding the Petitioner-Bank as a party defendant. There is no dispute that formal possession of the suit premises has been handed over by Respondent No.1 to the Bank. The trial Court accordingly permitted amendment of the plaint and the Petitioner was joined to the array of the defendants in the plaint.

2. Aggrieved by this order, the Petitioner has approached this Court under Article 226 of the Constitution of India. It appears that Respondent No.2 is a guarantor of certain transactions between the bank and Snowcem India Limited. Since the loan taken by Snowcem India Limited was not repaid, the Bank invoked the provisions of section 13 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, hereinafter referred to as 'Securitisation Act') and issued a notice to the guarantor-Respondent No.2. Further action was taken by the petitioner-Bank pursuant to which formal possession of the suit premises was taken over by the Bank.

3. The Petitioner-Bank has challenged the order of the Small Causes Court permitting the amendment to the plaint by adding the bank as party defendant on two grounds: (i) that the action taken by the bank under section 13(4) cannot be questioned in a civil court in view of the provisions of Section 34 of the Securitisation Act. Any person aggrieved by the measures taken by the bank under section 13(4) has a right to appeal before the Debt Recovery Tribunal under section 17 and, therefore, the Small Causes Court had no jurisdiction to entertain any grievance of Respondent No.1 qua the Petitioner bank. (ii) Since no final relief has been sought against the bank in the plaint, no

interim injunction could have been granted by the trial Court against the Petitioner-bank.

4. A Writ Petition was filed by Respondent No.1 challenging this action of the bank being Writ Petition (Lodging) No.385 of 2005. That writ petition was disposed off on 8.2.2005, permitting the Petitioner-bank to take formal possession. It was also observed in the order that it would be open to Respondent No.1 herein who was the Petitioner to take necessary steps under section 17 of the Securitisation Act. Accordingly, formal possession has been taken by the bank. An application being S.A. Application No.16 of 2005 has been preferred by Respondent No.1. A reply to that application has been filed by the bank in the form of the affidavit of Sujit Bhalekar, who is the Assistant Manager. The bank disputed the jurisdiction of the Debt Recovery Tribunal to entertain the application filed by Respondent No.1 herein. Left with no alternative, Respondent No.1 took out an interim notice No.598 of 2005 for leave to carry out the proposed amendment by adding the bank as a party defendant and for the temporary injunction against the bank from dispossessing her from the suit premises or interfering with her exclusive use. The Small Causes Court has made the notice absolute by allowing Respondent No.1 to add the Petitioner as a party. A temporary injunction has also been issued against the Petitioner restraining it from dispossessing Respondent No.1 and from interfering with her exclusive use and possession of

the suit premises.

5. Heard advocates.

6. In my view, the trial Court has not exceeded its jurisdiction in any manner by making the interim notice absolute. The declaratory suit filed by Respondent No.1 is against her landlord, the Respondent No.2 herein. Since the bank has stepped into the shoes of the guarantor invoking the provisions of the Securitisation Act and taking possession of the suit premises, the Small Causes Court has rightly permitted the amendment. The possession of the suit flat being with Respondent No.1 this Court has already in the writ petition filed by Respondent No.1 directed that only formal possession be taken. The Petitioner cannot prevaricate and contend on the one hand that only the provisions of the Securitisation Act can be invoked by Respondent No.1 if she is aggrieved by the measures taken by the bank under section 13(4) and on the other, when such an application is filed before the Debt Recovery Tribunal dispute its jurisdiction. The trial Court in my view, has correctly applied the law and justifiably has permitted the amendment and issued temporary injunction against the Petitioner-bank. The Petition, therefore, fails and is hereby rejected.